

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Determination of
Maltreatment Against Patricia Mayer and
Order of License Revocation for Anenson
Child Care Center

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

Administrative Law Judge Bruce H. Johnson (the "ALJ") conducted a prehearing conference in this matter on Friday, December 15, 2006, at 1:00 p.m., at the Office of Administrative Hearings, Suite 1700, 100 Washington Avenue South, Minneapolis, MN 55401.

Cara M. Hawkinson, Assistant Attorney General, Suite 900, 445 Minnesota Street, St. Paul, MN 55101-2127, represents the Minnesota Department of Human Services (Department) in this matter. The Respondent, Patricia Mayer, doing business as Anenson Child Care Center (the Licensee), 1539 12th Terrace NW, New Brighton, MN 55112, has not made an appearance in this matter either in person or by counsel.^[1] The OAH hearing record closed on December 22, 2006, when the Department's Motion for Default Judgment and supporting affidavit were received.

STATEMENT OF ISSUES

1. Did the Licensee commit maltreatment of a minor at Anenson Child Care Center in violation of Minn. Stat. § 626.556?
2. Is the Licensee now disqualified from direct contact with children served by Anenson Child Care Center or other program licensed by the Department as the result of a rescission of a set-aside of her previous disqualification?
3. Has the Licensee violated statutes and rules that are applicable to licensed child care programs?
4. Should the Licensee's child care license be revoked?

The ALJ concludes that the Licensee did commit maltreatment of minors, that the set-aside of her previous disqualification has been rescinded, and that she is now disqualified from direct contact with children served by Anenson Child Care Center. The ALJ also concludes that the Licensee is now a disqualified

controlling person, and that she has also violated other statutes and rules that are applicable to her child care license. The Commissioner's order revoking the license should therefore be affirmed.

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On August 10, 2006, a copy of the Notice of and Order for Pre-Hearing Telephone Conference (Notice of Hearing) in this matter was served via first class mail to Patricia Mayer, Owner, Anenson Child Care Center, 1539 12th Terrace NW, New Brighton, MN 55112, as appears from an Affidavit of Service by U. S. Mail on file herein. That address was the address that the Licensee had provided to the Department, in connection with her licensure as a provider of child care services, and the U. S. Postal Service did not return that Notice of Hearing to the Department as undelivered or undeliverable.^[2]

2. On August 15, 2005, the Office of Administrative Hearings (OAH) served the Licensee with copy of a Protective Order entered by the undersigned ALJ on that same date. The Protective Order was served via first class mail to the Licensee at the following address: Patricia Mayer, Anenson Child Care Center, 1539 12th Terrace NW, New Brighton, MN 55112. The U. S. Postal Service did not return that Protective to OAH as undelivered or undeliverable.

3. The Notice of Hearing scheduled a pre-hearing conference by telephone in this matter for Friday, September 22, 2006, at 1:30 p.m.

4. The ALJ subsequently attempted to contact the Licensee by telephone to confirm that she would be participating in the pre-hearing conference. However, the ALJ was advised by the Licensee's telephone company that the telephone number, which she had provided to the Department in connection with her licensure as a provider of child care services, had been disconnected.^[3]

5. By letter dated August 17, 2006, the Office of Administrative Hearings notified both the Licensee and counsel for the Department that the ALJ had been unable to contact the Licensee by telephone. The ALJ rescheduled the telephonic pre-hearing conference for Wednesday, September 6, 2006, at 10:00 a.m. and advised the Licensee that it was essential that she advise the ALJ of a telephone number at which she could be reached at that time.^[4] The Licensee did not respond to OAH's request.

6. In late August 2006, counsel for the Department was able to contact the Licensee by telephone. At that time, the Licensee informed counsel for the Department that she wished to withdraw her appeal from the Department's maltreatment determination, rescission of the set-aside of her disqualification,

and order revoking her child care license. Counsel for the Department then asked the Licensee to submit a written notice of withdrawal, which the Licensee agreed to do within a week. Based on that information, the ALJ continued the telephonic pre-hearing conference indefinitely, pending receipt of the Licensee's written notice of withdrawal of her appeal.^[5]

7. Following that conversation, the Licensee did not immediately submit a written notice of withdrawal. Thereafter, from early September through late November 2006, counsel for the Department spoke to the Licensee by telephone on several occasions reminding her to submit her written notice of withdrawal. The Licensee has never submitted a written notice that she is withdrawing her appeal.^[6]

8. In order to proceed with this matter, on November 30, 2006, the ALJ issued an Order scheduling a pre-hearing conference in this matter on Friday, December 15, 2006, at 1:00 p.m. at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, Minnesota 55401. On the same date, OAH served the Licensee with a copy of that Order via first class mail at the following address: Patricia Mayer, Anenson Child Care Center, 1539 12th Terrace NW, New Brighton, MN 55112. The U. S. Postal Service did not return that Order to OAH as undelivered or undeliverable.

9. The original Notice of Hearing contained the following provisions:

1. The Respondent's failure to appear at the pre-hearing conference may result in a finding that the Respondent is in default, that the Department of Human Services' allegations contained in this Notice and Order may be accepted as true, and its proposed action may be upheld.
2. If a party has good cause for requesting a delay of the pre-hearing conference, the request must be made to the Administrative Law Judge at least five days prior to the pre-hearing conference. A copy of the request must be served on the other party.
3. Any party intending to appear at the pre-hearing conference must file a Notice of Appearance form and return it to the Administrative Law Judge within 20 days of the date of service of this Notice and Order. A copy must be served on the Department of Human Service's attorney. A Notice of Appearance form is enclosed.

10. The ALJ's Order of November 30, 2006, contained the following provision:

- (2) That pursuant to Minn. R. 1400.6000, if the Respondents fail to appear at the prehearing conference, they may be held in

default and the allegations contained in the original Notice and Order for Prehearing Conference may be taken as true without further proof.

11. The Licensee did not appear at the December 15, 2006, pre-hearing conference at the Office of Administrative Hearings, did not obtain the ALJ's prior approval to be absent from that pre-hearing conference, did not file a Notice of Appearance, and did not request a continuance or any other relief.

12. Because Respondent failed to appear at the pre-hearing conference, she is in default.

13. When a party is in default, Minn. R. 1400.6000 provides that the allegations contained in the notice of and order for hearing may be taken as true. The allegations contained in the Notice and Order for Hearing, including the incorporated Order of Revocation, are all taken as true and incorporated by reference into these Findings of Fact.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. Minnesota law gives the Administrative Law Judge and the Commissioner authority to conduct this contested case proceeding and to make findings, conclusions, and recommendations or a final order, as the case may be.^[7]

2. There was proper and timely notice of the December 15, 2006, pre-hearing conference, and the Department has also fulfilled all procedural requirements of law and rule so that this matter is properly before the Administrative Law Judge.

3. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations of and the issues set out in that Notice and Order for Hearing or other pleadings may be taken as true or deemed proved without further evidence.

4. The Licensee is in default herein as a result of her failure to appear at the pre-hearing conference in this matter without the ALJ's prior consent.

5. The Licensee was disqualified from providing direct contact services after she was convicted of wrongfully receiving public assistance in Anoka County District Court in September 1998.

6. The Licensee subsequently requested reconsideration of her disqualification, and thereafter, the Commissioner set the Licensee's

disqualification aside and enabled her to provide direct contact services at Anenson Child Care Center.

7. In December 2004, the Licensee committed maltreatment of minors on several occasions by yelling at children and handling them in a physically forceful manner.

8. The Department subsequently rescinded the set-aside of the Licensee's disqualification upon a determination that she poses a risk of harm to children under her care. The Licensee does pose a risk of harm to individuals served by her child care program at Anenson Child Care Center.

9. The Licensee has violated other statutes and rules that govern her child care program, namely: failure to follow background study requirements, failure to fulfill mandated reporting requirements, repeated violations governing child-to-staff ratios and staff distribution requirements, lack of appropriate supervision, and repeated violations of rules requiring keeping hazardous objects away from children and for age category grouping.

10. Minn. Stat. § 245A.07, empowers the Commissioner to revoke a license if a license holder fails to comply fully with applicable laws or rules.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner AFFIRM the April 15, 2005, Notice of Reconsideration of Maltreatment Determination, Notice of Reconsideration of Disqualification, and Order of License Revocation.

Dated: January 3, 2007.

/s/ Bruce H. Johnson

BRUCE H. JOHNSON
Administrative Law Judge

Reported: Default (no tapes)
No transcript prepared

NOTICES

This report is a recommendation, not a final decision. The Commissioner of Human Services will issue a final decision after reviewing the administrative record, and he may adopt, reject or modify the Administrative Law Judge's Findings of Fact, Conclusions, and Recommendations. The parties have 10 calendar days after receiving this recommended decision in which to file any exceptions to the report with the Commissioner.^[8] Parties should contact the office of Cal Ludeman, Commissioner of Human Services, Box 64998, St. Paul MN 55155, (651)431-2907 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minnesota law, the Commissioner of Human Services is required to serve his final decision upon each party and the Administrative Law Judge by first-class mail.

^[1] See Finding No. 4.

^[2] See also Affidavit of Cara M. Hawkinson (Ex. 1).

^[3] Ex. 2.

^[4] *Id.*

^[5] Ex. 1 at ¶¶ 7, 8, and 9.

^[6] Ex. 1 at ¶ 11.

^[7] Minn. Stat. §§ 14.50, 14.57, 14.69; 245A.05 through 245A.08; and Ch. 245C.

^[8] Minn. Stat. § 14.61.